

would be an important tool for such entities potentially to obtain financing.⁴²⁴ By accepting bids only from entities that had financing firmly in place, Telephone USA argues that Verizon Wireless limited the pool of potentially successful bidders to established companies with easy access to capital.⁴²⁵

124. The Applicants state that it was essential that a prospective buyer demonstrate it had adequate financing to complete the transaction at the time final bids were submitted.⁴²⁶ The Applicants note that the FCC and the DOJ required Verizon Wireless to dispose of the Divestiture Markets rapidly and by a firm deadline in one of the most adverse economic climates in decades.⁴²⁷ The Applicants allege that Verizon Wireless therefore needed a high degree of confidence that a buyer would be deemed acceptable to both the FCC and the DOJ, and furthermore needed certainty that the divestitures would be consummated should the necessary approvals be obtained.⁴²⁸ According to the Applicants, by the end of the bidding process, Verizon Wireless chose two entities with the financial resources necessary to ensure that the proposed transactions would be timely consummated.⁴²⁹

125. We have reviewed the record concerning the conduct of the bidding process, which includes extensive documentation produced by Verizon Wireless in response to the Bureau's Information Request. The record discloses that Verizon Wireless received a total of three bids that included a showing of firm financing – from AT&T, ATN, and [REDACTED].⁴³⁰ AT&T's proposal represented [REDACTED].⁴³¹

126. We recognize the requirement of a firm financing demonstration made participation more difficult for certain parties, but we conclude that it was within the bounds of reasonableness for Verizon Wireless to impose this condition, as well as to decline to enter into an exclusivity arrangement with any potential bidder in order to permit such bidder to negotiate financing, in order for it to meet the timing and buyer acceptability requirements of the Final Judgment. The Final Judgment directed that the divestiture “shall be made to an Acquirer or Acquirers that, in plaintiff United States's sole judgment, upon consultation with the relevant plaintiff State, has the intent and capability (including the necessary managerial, operational, technical, and *financial capability*) of competing effectively in the provision of mobile wireless telecommunications services.”⁴³² It was reasonable for Verizon Wireless to impose appropriate conditions that would help to ensure that it could identify, within the time constraints imposed by the DOJ and the Commission, a buyer or buyers that would be acceptable to both the DOJ and this

⁴²⁴ CAPCC Reply at 4; *Ex Parte* Letter from Vicki Iseman, Alcalde & Fay, to Marlene H. Dortch, Secretary Federal Communications Commission, Attach. 1 at 4 n.5 (Apr. 2, 2010) (such exclusive negotiating periods are often used to provide small independent businesses with an opportunity to obtain financing for large-scale acquisitions).

⁴²⁵ CAPCC Petition at 6-7; Telephone USA Jan. 25, 2010 *Ex Parte* at 3. NABOB states that Verizon Wireless's preference to sell to a single purchaser also limited the pool of companies with easy access to capital because it made it very unlikely that a minority purchaser, or new entrant, could finance such an acquisition. NABOB Petition at 6.

⁴²⁶ Joint Opposition at 26; *see, e.g.*, Verizon Wireless Information Request Response at 00001418, 00001431.

⁴²⁷ Joint Opposition at 26 & n.94; *see also* Verizon Wireless Information Request Response at 17.

⁴²⁸ Joint Opposition at 26; *see also* Verizon Wireless Information Request Response at 17.

⁴²⁹ Joint Opposition at 26.

⁴³⁰ *See* Verizon Wireless Information Request Response at 16.

⁴³¹ Verizon Wireless Information Request Response at 18.

⁴³² *Verizon Communications*, 607 F.Supp.2d at 7 (emphasis added).

Commission and that could close the transaction upon receipt of necessary approvals from the DOJ and the Commission.

127. *Transition Services Agreement.* Another alleged barrier to effective participation by minorities and socially disadvantaged groups stems from Verizon Wireless's stated preference for a transition services agreement with a maximum term of one year.⁴³³ Verizon Wireless stated that some small, non-operator bidders expressed a need for a multi-year operating or transition services agreement.⁴³⁴ Verizon Wireless asserted that such agreement would be contrary to the Final Judgment, which provided that Verizon Wireless may provide transition or other support services for a period of up to twelve months.⁴³⁵

128. There are tradeoffs in determining the appropriate length of transition services agreements – the term needs to be long enough to enable the acquiring entity to establish its operations and be a successful standalone competitor, but a term that is too long could potentially thwart the very purposes of requiring the divestiture. Adoption of a one-year term is required by the Final Judgment, which states that, “[a]t the option of the Acquirer(s) of the Divestiture Assets, defendants shall enter into a contract for transition services customarily provided in connection with the sale of a business providing mobile wireless telecommunications services or intellectual property licensing sufficient to meet all or part of the needs of the Acquirer(s) for a period of *up to one year*.”⁴³⁶ In recent transactions involving transition services agreements, the Commission and the DOJ have frequently authorized one-year transition services agreements. We thus conclude that it was not unreasonable for Verizon Wireless to state a preference for limiting the term of any necessary transition services agreement to one year.

129. *Conduct of the Bidding Process.* CAPCC, NABOB, and Telephone USA contend that Verizon Wireless and Morgan Stanley conducted the bidding process in a way that erected barriers to successful participation by minority-owned entities. As noted above, CAPCC and Telephone USA assert that Verizon Wireless did not reach out to minority buyers and did not take appropriate steps to encourage minority-owned businesses or members of socially disadvantaged groups that were interested in the markets to be divested.⁴³⁷ NABOB also contends that Verizon Wireless did not consistently follow its own announced bidding procedures.⁴³⁸ Specifically, NABOB states that the dates set for submission of bids changed without warning, and no information was provided to minority bidders explaining these changes.⁴³⁹ Moreover, CAPCC and NABOB argue that the bidding process was predetermined.⁴⁴⁰ CAPCC, NABOB, and Telephone USA conclude that the Commission, in light of the facts surrounding

⁴³³ Joint Opposition at 27. [REDACTED] See, e.g., Verizon Wireless Information Request Response at 00001505, 00001359.

⁴³⁴ Joint Opposition at 27. See also Verizon Wireless Information Request Response at 00001571, 00002010; see also *id.* at 15.

⁴³⁵ Joint Opposition at 27 n.99. See also Verizon Wireless Information Request Response at 00001626; see also *id.* at 00002022, 00001622.

⁴³⁶ *Verizon Communications*, 607 F.Supp.2d at 9 (emphasis added).

⁴³⁷ See CAPCC Petition at 6-7; Telephone USA Jan 25, 2010 *Ex Parte*, Attach. 1 at 5.

⁴³⁸ NABOB Petition at 7.

⁴³⁹ *Id.*

⁴⁴⁰ CAPCC Petition at 10; NABOB Petition at 7-8.

the bidding process, should initiate an investigation,⁴⁴¹ direct Verizon Wireless to conduct a “true bidding process,”⁴⁴² or designate the applications for hearing.⁴⁴³

130. Verizon Wireless and Morgan Stanley initiated the process of selling the properties by providing a preliminary overview of the markets and a non-disclosure agreement in August and September 2008 to approximately 70 prospective buyers, including national, regional, and small wireless carriers, wireline telecommunications companies, entrepreneurs, financial buyers, industry veterans, and businesses owned by minorities and socially disadvantaged groups.⁴⁴⁴ A Confidential Information Memorandum providing more detailed business and operational data was distributed to over 70 parties in November 2008.⁴⁴⁵ Letters of preliminary indications of interest were submitted to Morgan Stanley in mid-November 2008.⁴⁴⁶ Morgan Stanley, at the direction of Verizon Wireless, invited over 20 parties to participate in more detailed due diligence (including but not limited to data room access and access to company management), and of these potential bidders, four were minority-owned entities and one was a regional consortium that included a financial sponsor that typically has sought to partner with minority-owned entities.⁴⁴⁷ The first round final bid deadline was originally scheduled for February 13, 2009, but was changed to March 30, 2009,⁴⁴⁸ and interested parties were informed of this fact.⁴⁴⁹ Verizon Wireless received final bids from 14 entities, three of which were minority-owned entities.⁴⁵⁰ On May 8, 2009, AT&T finalized its purchase agreement with Verizon Wireless⁴⁵¹ and announced that it would acquire 79 of the 105 Divestiture Markets.⁴⁵² On June 9, 2009, the Purchase Agreement between ATN and Verizon Wireless for 26 CMAs was finalized.⁴⁵³

⁴⁴¹ CAPCC Petition at 8-11; NABOB Petition at 10; CAPCC Reply at 8-10; NABOB Reply at 7; Telephone USA Jan. 25, 2010 *Ex Parte*, Attach. 1 at 3.

⁴⁴² NABOB Petition at 10; NABOB Reply at 7.

⁴⁴³ NABOB Petition at 10; NABOB Reply at 7; Telephone USA Jan. 25, 2010 *Ex Parte*, Attach. 1 at 3.

⁴⁴⁴ Joint Opposition, Christopher Bartlett Declaration at ¶ 4. As a result, [REDACTED]. Verizon Wireless Information Request Response at 00000826-827; *see also id.* at 00000828-830 (list of potential bidders organized by type of bidder).

⁴⁴⁵ *Id.* at ¶ 5; *see also* Verizon Wireless Information Request Response at 0000022-228 (Confidential Information Memorandum).

⁴⁴⁶ Joint Opposition, Christopher Bartlett Declaration at ¶ 7.

⁴⁴⁷ Joint Opposition at 16; *id.*, Christopher Bartlett Declaration at ¶ 8. [REDACTED] Verizon Wireless Information Request Information at 11.

⁴⁴⁸ Joint Opposition, Christopher Bartlett Declaration at ¶ 12 (stating that the reason for the change in the final bid date was because the work being done on the audited financial statements was taking longer than had initially been communicated to prospective bidders).

⁴⁴⁹ Verizon Wireless Information Request Response at 00000231-238.

⁴⁵⁰ Joint Opposition, Christopher Bartlett Declaration at ¶ 13. [REDACTED] Verizon Wireless Information Request Response at 00001569.

⁴⁵¹ Verizon Wireless Information Request Response at 000002050-2122.

⁴⁵² *See* AT&T Press Release Regarding Acquisition from Verizon Wireless; Verizon Communications Inc., SEC Form 10-Q, at 7 (for the period ending Mar. 31, 2009) (“Verizon 10-Q”), *available at* <http://www.sec.gov/Archives/edgar/data/732712/000119312509107317/d10q.htm>.

⁴⁵³ *See* Verizon 10-Q at 7.

131. We find that Verizon Wireless took a number of steps throughout the course of the bidding process to promote participation by minority-owned businesses and socially disadvantaged groups, so long as that participation met the generally applicable ground rules (*e.g.*, the firm financing requirement, the one-year term for a transition services agreement, and sale of the majority of the Divestiture Markets in clusters as defined in the Final Judgment). The documents and other aspects of the record show that Verizon Wireless and Morgan Stanley reached out for assistance in identifying potential minority-owned bidders⁴⁵⁴ and also took affirmative steps to encourage entities that had shown an interest in acquiring various Divestiture Markets to continue to participate in the bidding process.⁴⁵⁵ Documents submitted by Verizon Wireless show repeated contacts between Verizon Wireless and Morgan Stanley, on the one hand, and those negotiating on behalf of minority-owned entities, on the other hand.⁴⁵⁶ With respect to the first round final bid date being changed, the Applicants assert that Verizon Wireless sent a letter on January 30, 2009, to all prospective bidders still participating at that stage of the process and the letter indicated that the final bid date was being changed from February 13, 2009 to March 30, 2009⁴⁵⁷ in light of the fact that the work being done on the audited financial statements was taking longer than initially had been communicated.⁴⁵⁸ Further, regarding the allegations that the proposed transaction was predetermined, our review of the record before us that includes the numerous documents produced by Verizon Wireless with respect to the bidding process suggests that the negotiations between AT&T and Verizon Wireless evidence a lack of certainty that the parties would in fact come to an agreement.⁴⁵⁹

132. *Designation for Hearing or Investigation.* NABOB and Telephone USA contend that the Commission should designate these applications for a hearing, citing their concerns about the conduct of the bidding process.⁴⁶⁰ In addition, CAPCC urges the Commission to conduct an investigation into the circumstances of Verizon Wireless's proposed sale of the divestiture assets.⁴⁶¹ In light of the extensive record we have collected about the bidding process and the language in the *Verizon Wireless-ALLTEL*

⁴⁵⁴ For example, the Applicants describe that Verizon Wireless asked the MMTC to identify minority-owned businesses that would be in a position to participate in the divestiture sale process and one of which submitted a bid. Joint Opposition at 22. [REDACTED] Verizon Wireless Information Request Response at 11. [REDACTED] *Id.* at 12.

⁴⁵⁵ Morgan Stanley, at Verizon Wireless's direction, proactively reached out to one minority-owned entity and encouraged it to reconsider its decision to not remain in the divestiture auction process. Joint Opposition at 25; Verizon Wireless Information Request Response at 00001152. Morgan Stanley and senior Verizon Wireless staff also had a meeting with this particular bidder and provided guidance as to the geographic areas in which it could be competitive in the sale process. Joint Opposition at 25; Verizon Wireless Information Request Response at 00001152.

⁴⁵⁶ See, *e.g.*, Verizon Wireless Information Request Response at 00001279, 00001300-1303, 00001314-1315, 00001328, 00001349, 00001361, 00001383, 00001418, 00001421, 00001438, 00001456, 00001566, 00001504, 00001527.

⁴⁵⁷ Joint Opposition at 24 n.87; *id.*, Christopher Bartlett Declaration at ¶ 12; Verizon Wireless Information Request Response at 00000235-238 (January 30, 2009 bid procedures letter changing the final bid deadline from February 13, 2009 to March 30, 2009).

⁴⁵⁸ Joint Opposition at 24 n.87; *id.*, Christopher Bartlett Declaration at ¶ 12. [REDACTED] Verizon Wireless Information Request Response at 00000235-238.

⁴⁵⁹ See, *e.g.*, Verizon Wireless Second Supplemental Response of Mar. 11, 2010 at 00002419-00002425.

⁴⁶⁰ NABOB Petition at 8-10; NABOB Reply at 6-7; Telephone USA Jan. 25, 2010 *Ex Parte*, Attach. 1 at 8-10, Attach. 2 at 7.

⁴⁶¹ CAPCC Petition at 8-11; CAPCC Reply at 8-10.

Order, we do not find that these allegations merit an investigation or have presented a substantial and material question of fact that would warrant designating this transaction for a hearing.⁴⁶²

133. *Conclusion.* To implement the divestitures ordered by the Commission and the DOJ with respect to its merger with ALLTEL in the timely manner required by the DOJ, Verizon Wireless solicited bids for the Divestiture Markets. The conduct of this bidding process has been challenged as not including sufficient opportunities for businesses owned by minorities or socially disadvantaged groups to obtain any of the markets subject to divestiture and the parties request that the Commission investigate, direct Verizon Wireless to conduct a “true bidding process,” or designate the applications for hearing. While it is possible that another bidding process may have provided additional opportunities for businesses owned by minorities or socially disadvantaged groups, we find that the process complied with the Commission’s requirements imposed in the *Verizon Wireless-ALLTEL Order* and does not otherwise undercut the competitive objectives the Commission sought to implement by requiring divestitures in 105 markets.

E. Provision of Service to Members of the Oglala Sioux Tribe on the Pine Ridge Indian Reservation

134. *Background.* Pursuant to the *Verizon Wireless-ALLTEL Order* and Verizon Wireless’s settlement agreement with the DOJ, Verizon Wireless must divest business units serving both CMA638 and CMA639,⁴⁶³ each of which covers portions of the Pine Ridge Indian Reservation (the “Reservation”), which is home to the Oglala Sioux Tribe. The Reservation encompasses area in three counties in South Dakota – Shannon, Jackson, and Bennett. Shannon is located in CMA638 South Dakota 5 - Custer, which includes a total of three counties, while Jackson and Bennett are located in CMA639 South Dakota 6 - Haakon, which includes a total of ten counties. Wireless service on the Reservation is currently provided by Western Wireless Corporation (“Western Wireless”), which is now an indirect wholly-owned subsidiary of Verizon Wireless as a result of the Verizon Wireless-ALLTEL transaction.⁴⁶⁴ Western Wireless provides service on the Reservation pursuant to the 2000 Tate Woglaka Service Agreement (“TWSA”) with the Tribe.⁴⁶⁵ In 2001, the Commission designated Western Wireless as an Eligible Telecommunications Carrier (“ETC”) for tribal members on the Reservation.⁴⁶⁶

135. The Oglala Sioux Tribe requests that the Commission “withhold approval of the transfer of spectrum that covers the area of the Pine Ridge Indian Reservation from Verizon [Wireless] to AT&T until the Oglala Sioux Tribe can resolve the dispute between the Oglala Sioux Tribe and Verizon

⁴⁶² See 47 U.S.C. § 309(d)(2).

⁴⁶³ *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17518 ¶ 162, 17552, App. B.

⁴⁶⁴ ALLTEL acquired Western Wireless in 2005. See Applications of Western Wireless Corporation and ALLTEL Corporation for Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 05-50, *Memorandum Opinion and Order*, 20 FCC Rcd 13053, 13054 ¶ 1 (2005).

⁴⁶⁵ A copy of the TWSA is attached to the OST Mar. 10, 2010 *Ex Parte* as Attachment A.

⁴⁶⁶ See Western Wireless Corporation Petition For Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Memorandum Opinion and Order*, 16 FCC Rcd 18145, 18149 ¶ 11 (2001) (finding that the FCC has jurisdiction to determine whether Western Wireless is eligible to receive federal universal service support for providing telephone service to residents of the Pine Ridge Reservation); Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition For Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota, CC Docket No. 96-45, *Memorandum Opinion and Order*, 16 FCC Rcd 18133, 18136 ¶ 6 (2001) (designating Western Wireless as an ETC for a service area that consists of tribal members residing on the Pine Ridge Reservation).

[Wireless].”⁴⁶⁷ The Tribe states that it does not seek to delay the broader transfer of wireless assets from Verizon Wireless to AT&T.⁴⁶⁸ The Tribe also requests that the Commission impose mediation between the parties to the dispute.⁴⁶⁹ The Tribe claims jurisdiction over the wireless assets controlled by Verizon Wireless as the successor to the assets in the TWSA.⁴⁷⁰ In its submissions to the Commission, the Tribe states it “will be irreparably harmed if Verizon [Wireless] is able to transfer the spectrum and other network assets on the Pine Ridge Indian Reservation to AT&T without the Tribe’s consent, in violation of the TWSA.”⁴⁷¹

136. Verizon Wireless argues that this is a private, contractual dispute and Commission intervention is unnecessary and inappropriate.⁴⁷² Verizon Wireless asserts that the dispute with the Tribe involves claims of commercial contract law for which the Commission has no special expertise and does not raise matters germane to the agency’s authority.⁴⁷³ Verizon Wireless also argues that the Commission has repeatedly refused to defer or delay action on a license transfer or assignment, or to become involved in a private dispute, when there are other forums to resolve the disagreement.⁴⁷⁴ Verizon Wireless notes that the parties are currently litigating issues in two separate courts: Oglala Sioux Tribal Court and Federal District Court in South Dakota.⁴⁷⁵ Finally, Verizon Wireless states that the Tribe’s proposed remedy could have an impact beyond the boundaries of the Reservation because the Reservation’s exterior borders cover a relatively small portion of the 13 counties encompassed in the two CMAs at issue.⁴⁷⁶

137. On January 6, 2010, Verizon Wireless notified the Oglala Sioux Tribe of its intent to assign the TWSA to AT&T, and requested the Tribe’s consent to that assignment.⁴⁷⁷ On January 13,

⁴⁶⁷ See OST Mar. 10, 2010 *Ex Parte* at 1; see also *Ex Parte* Letter from Jonathan E. Canis, Arent Fox, Counsel for Oglala Sioux Tribe, to Marlene H. Dortch, Secretary, Federal Communications Commission, Attach. at 2, 9 (May 5, 2010) (“OST May 5, 2010 *Ex Parte*”); OST May 24, 2010 *Ex Parte* at 2, Attach. at 2.

⁴⁶⁸ OST May 5, 2010 *Ex Parte*, Attach. at 9; OST Mar. 10, 2010 *Ex Parte* at 2, 5-6; OST May 24, 2010 *Ex Parte* at 2, Attach. at 2.

⁴⁶⁹ OST May 5, 2010 *Ex Parte*, Attach. at 9.

⁴⁷⁰ OST Mar. 10, 2010 *Ex Parte* at 3.

⁴⁷¹ *Id.* at 4. The Oglala Sioux Tribe states that should Verizon Wireless obtain the ability to transfer the Pine Ridge spectrum and assets to AT&T without the Tribe’s consent it would: 1) void the Tate Woglaka Service Agreement; 2) force the Tribe to negotiate a service agreement *ab initio* with AT&T with many fundamental questions as to service and cost unaddressed; and 3) effectively remove ETC status from the Pine Ridge Reservation without a relinquishment proceeding. OST May 5, 2010 *Ex Parte*, Attach. at 8.

⁴⁷² Letter from Nancy J. Victory, Wiley Rein LLP, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1, 4 (Mar. 19, 2010) (“Verizon Wireless Mar. 19, 2010 *Ex Parte*”). Verizon Wireless states that the Oglala Sioux Tribe mischaracterizes the terms of the underlying commercial service in dispute between the parties. Verizon Wireless Mar. 19, 2010 *Ex Parte* at 1.

⁴⁷³ Verizon Wireless Mar. 19, 2010 *Ex Parte* at 2.

⁴⁷⁴ *Id.* at 2-3.

⁴⁷⁵ Verizon Wireless Mar. 19, 2010 *Ex Parte* at 2-3 n.8. Verizon Wireless states that it sought relief in Federal District Court in South Dakota in order to protect its rights to arbitration under the TWSA. *Id.*

⁴⁷⁶ *Id.* at 2 n.3.

⁴⁷⁷ Letter from Nancy J. Victory, Wiley Rein LLP, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (May 13, 2010) (“Verizon Wireless May 13, 2010 *Ex Parte*”) (attaching (continued....))

2010, the Oglala Sioux Tribe stated that it could not approve the assignment until it received answers to certain questions concerning the transaction.⁴⁷⁸ The Tribe and Verizon Wireless, either directly or through its subsidiaries, currently are engaged in two legal proceedings that relate to the interpretation of the requirements of the TWSA and their applicability to the proposed transaction between AT&T and Verizon Wireless – one case in Federal District Court in South Dakota⁴⁷⁹ and another case in Oglala Sioux Tribal Court.⁴⁸⁰ In both of these proceedings, the Courts have recognized the Commission's exclusive jurisdiction to decide the licensing and transfer of wireless spectrum.⁴⁸¹

138. *Discussion.* We note that there are significant obstacles to granting the relief requested by the Tribe – withholding action with respect to the areas making up the Reservation, effectively carving them out from the CMA-based licenses of which they are a part and that otherwise are proposed to be transferred to AT&T. Specifically, pursuant to the Final Judgment, all of the assets in South Dakota are required to be sold to a single buyer as a cluster of assets.⁴⁸² Although the Final Judgment does contemplate a process for splitting up a cluster to multiple purchasers, if the DOJ can make the requisite findings, but we are unaware that any request has been made to the DOJ to permit division of the South Dakota cluster in the manner requested by the Tribe.

139. We conclude that the disputes between the Tribe and Verizon Wireless encompass contractual matters in which the Commission ordinarily does not become involved.⁴⁸³ The Tribe and Verizon Wireless are pursuing resolution of their respective claims under the TWSA in two separate courts, and we see no reason for the Commission to inject itself into that process. Moreover, we

(Continued from previous page)

Letter from Patrick F. Philbin, Kirkland & Ellis LLP, to Deborah Dubray, Gonzalez Law Firm, and Oglala Sioux Tribe (Jan. 6, 2010)).

⁴⁷⁸ Verizon Wireless May 13, 2010 *Ex Parte* (attaching Letter from Joe RedCloud, Chairman, Oglala Sioux Tribal Utilities Commission, to Patrick F. Philbin, Kirkland & Ellis LLP (Jan. 13, 2010)).

⁴⁷⁹ ALLTEL Communications LLC v. Oglala Sioux Tribe, 5:10-cv-05011-JLV (D.S.D. filed Feb. 17, 2010).

⁴⁸⁰ Oglala Sioux Tribe v. ALLTEL Communications LLC and Verizon Wireless LLC, CIV. 09-0673 (Oglala Sioux Tribal Court, filed Oct. 6, 2009).

⁴⁸¹ See *Oglala Sioux Tribe v. ALLTEL Communications LLC and Verizon Wireless LLC*, CIV. 09-0673, *Order Denying Respondent's Motion to Dismiss* at 3-4 (May 13, 2010) (holding that the Tribal Court is not predisposed to intrude into areas that are regulated exclusively by federal law and federal agencies); *ALLTEL Communications LLC v. Oglala Sioux Tribe*, 5:10-cv-05011-JLV, *Order Denying Motion to Dismiss, Denying Motion for a Preliminary Injunction, Denying Motion to Intervene, and Order Compelling Arbitration*, at 26 (D.S.D. filed May 18, 2010) (stating Congress delegated the authority, solely and exclusively, to the FCC to license the use of radio transmissions).

⁴⁸² *Verizon Communications*, 607 F. Supp.2d at 7 (stating that the “Divestiture Assets listed in each numbered subsection below shall be divested together to a single Acquirer, provided that it is demonstrated to the sole satisfaction of plaintiff United States . . . that the Divestiture Assets will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint”).

⁴⁸³ See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17538 ¶ 214 (refusing to consider the question of whether the transaction would violate existing reseller agreements because it is a private contractual dispute); see also *id.* at ¶ 214 n.742 (citing A.L.Z. Broadcasting, Inc., *Memorandum Opinion and Order*, 15 FCC Rcd 23200, 23201 ¶ 3 (2000) (finding contractual dispute concerning payment obligations to be within the province of a court of competent jurisdiction, not the Commission) (citations omitted); Applications of Verestar, Inc. (Debtor-In-Possession) for Consent to Assignment of Licenses to SES Americom, Inc., IB Docket No. 04-174, *Memorandum Opinion, Order, and Authorization*, 19 FCC Rcd 22750, 22756 ¶ 16 (IB & WTB 2004) (declining to defer action on assignment applications pending resolution of litigation, noting it is “long-standing Commission policy not to involve itself with private contractual disputes) (citations omitted).

conclude, consistent with past practice, that the pendency of these legal proceedings should not cause us to delay our action on the pending AT&T-Verizon Wireless applications.⁴⁸⁴

140. Notwithstanding the litigation between the Tribe and Verizon Wireless, we find it essential to take steps to ensure that wireless telecommunications services continue to be provided on the Reservation. The Tribe has pointed out that prior to implementation of the TWSA, more than 50 percent of the Reservation residents had no access to basic phone service or could not afford it.⁴⁸⁵ The Tribe also states that now over 90 percent of Reservation residents have access to such service, and approximately 75 percent of households on the Reservation use the cellular service provided by Western Wireless⁴⁸⁶ as their sole or primary source of basic phone service.⁴⁸⁷ Given the economic circumstances on the Reservation, it is clear that the wireless service provided to tribal members on the Reservation at prices supported by the Commission's universal service funds is essential. In particular, we note that one of the wireless service offerings made available on the Reservation is priced at \$1 per month.⁴⁸⁸

141. On May 20, 2010, AT&T filed with the Commission a letter including voluntary commitments to ensure the continuity of service on the Reservation.⁴⁸⁹ First, AT&T commits to undertake on a going forward basis the rights and obligations of Western Wireless under the TWSA.⁴⁹⁰ At the same time, this commitment is not, according to AT&T, intended to foreclose the Tribe and AT&T from agreeing to a mutually acceptable alternative to the TWSA.⁴⁹¹ Second, AT&T commits to build a 3G HSPA broadband wireless network on the Reservation and transition the divestiture CDMA network subscribers living within the boundaries of the Reservation ("Reservation Divestiture CDMA Network Subscribers") to the 3G HSPA broadband wireless network within 12 months of the closing of the transaction between it and Verizon Wireless.⁴⁹² As part of that transition, the Reservation Divestiture CDMA Network Subscribers will be eligible to receive new handsets comparable to their existing CDMA handsets at no cost and with no contract extension.⁴⁹³ Third, AT&T commits that, until the transition to the 3G HSPA broadband wireless network is complete, AT&T will provide the Reservation Divestiture

⁴⁸⁴ See, e.g., Margaret Jackson and Ray Webb, *Memorandum Opinion and Order*, 18 FCC Rcd 26403, 26404 ¶ 6 (2003) (declining to defer action on transfer applications pending court litigation of contractual dispute); Northwest Broadcasting, Inc. and Western Pacific, Inc., *Memorandum Opinion and Order*, 12 FCC Rcd 3289, 3295-96 ¶ 14 (1997).

⁴⁸⁵ OST May 5, 2010 *Ex Parte*, Attach. at 5.

⁴⁸⁶ Under the requirements of the *Verizon Wireless-ALLTEL Order*, the Western Wireless operations on the Reservation have been conducted under the control of the Management Trustee since the closing of the Verizon Wireless-ALLTEL transaction on January 9, 2009. See *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17518-19 ¶¶ 163-65.

⁴⁸⁷ OST May 5, 2010 *Ex Parte*, Attach. at 5.

⁴⁸⁸ *Id.*

⁴⁸⁹ AT&T Commitment Letter at 2-3. See also *Ex Parte* Letter from Joan Marsh, Vice President – Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission (May 26, 2010) ("AT&T May 26, 2010 *Ex Parte*").

⁴⁹⁰ AT&T Commitment Letter at 2. AT&T's commitment does not extend to any outstanding obligations that may be owed the Tribe that predate, or arise out of facts and circumstances that predate, the closing of the transaction. *Id.* See also AT&T May 26, 2010 *Ex Parte* at 2.

⁴⁹¹ AT&T Commitment Letter at 3; see also AT&T May 26, 2010 *Ex Parte* at 2.

⁴⁹² AT&T Commitment Letter at 2.

⁴⁹³ *Id.*

CDMA Network Subscribers with the same degree of access to services on the divestiture CDMA network as they currently have.⁴⁹⁴ AT&T represents that for one year after the closing of the AT&T-Verizon Wireless transaction, it will continue to offer the post-paid rate plans currently offered to Reservation Divestiture CDMA Network Subscribers without any material changes.⁴⁹⁵ Finally, AT&T represents that it will seek ETC status from the Commission similar to the ETC status now held by Western Wireless with respect to tribal members residing on the Reservation.⁴⁹⁶ If AT&T obtains such ETC status and if ETC funding continues to be available to AT&T, it will continue to offer comparable voice rate plans.⁴⁹⁷ AT&T states that these commitments with respect to the provision of wireless service on the Reservation will expire three years after the closing of the AT&T-Verizon Wireless transaction.⁴⁹⁸ AT&T also notes that its ability to fulfill these commitments is necessarily contingent upon it being able to access and construct, operate, and maintain the facilities necessary to provide first CDMA service and later HSPA service.⁴⁹⁹ In that regard, AT&T states that it will inform the Commission promptly of any developments of which it is aware that it anticipates will materially affect its ability to fulfill this set of commitments regarding the provision of wireless service on the Reservation.⁵⁰⁰

142. We find that these commitments made by AT&T with respect to the provision of wireless service on the Reservation address our concerns about the continuity of wireless service offerings on the Reservation. Moreover, effectuation of these commitments should not, based on the information provided to us, affect the ability of the Tribe and Verizon Wireless to pursue their respective claims against one another in their forums of choice. Implementation of the AT&T commitments will ensure that current tribal members living on the Reservation will continue to have access to wireless services as a primary means of communications. We accordingly condition our consent to the proposed transaction on AT&T's fulfillment of its commitments reflected in the AT&T Commitment Letter with respect to the provision of wireless services on the Reservation.

F. Predatory Pricing

143. *Background.* RTG and NTCA argue that AT&T and Verizon Wireless have the ability to engage in a successful predatory pricing strategy.⁵⁰¹ Predatory pricing occurs when a firm first lowers its price to drive its rivals out of the market as well as to deter entry, and then raises its price once its rivals exit the market.⁵⁰² Generally, when a firm adopts a predatory pricing strategy, it sets price below some measure of cost.⁵⁰³

⁴⁹⁴ *Id.*

⁴⁹⁵ *Id.* at 3. AT&T does note that, for systems reasons, it will not be able to continue the Lifeline prepaid plans that are currently offered by Western Wireless on the Reservation, but will convert those customers to Lifeline post-paid plans at the same rates. *Id.* at 3 n.1.

⁴⁹⁶ *Id.* at 3.

⁴⁹⁷ *Id.*

⁴⁹⁸ *Id.*

⁴⁹⁹ *Id.*

⁵⁰⁰ *Id.*

⁵⁰¹ RTG Petition at 7-8, NTCA Aug. 7, 2010 *Ex Parte* at 3.

⁵⁰² See DENNIS W. CARLTON & JEFFREY M. PERLOFF, MODERN INDUSTRIAL ORGANIZATION 352-357 (4th ed. 2005). See also Applications for the Assignment of Licenses from Denali PCS, L.L.C. to Alaska DigiTel, L.L.C. and the Transfer of Control of Interests in Alaska DigiTel, L.L.C. to General Communications, Inc., WT Docket No. 05-114, Memorandum Opinion and Order, 21 FCC Rcd 14863, 14907-08 ¶ 107 (2006) ("*GCI-Alaska DigiTel Order*"); (continued....)

144. RTG argues that AT&T and Verizon Wireless have the ability to temporarily lower prices in any of the 79 AT&T Divestiture Markets where there is a third party provider to drive out competition.⁵⁰⁴ RTG further argues that Sprint Nextel and T-Mobile, the two other nationwide providers, are more urban-centric, and therefore do not provide service in many of these markets.⁵⁰⁵ As a result, the third provider in these markets is usually a small rural operator that would be unable to compete against a price reduction because it does not have the same economies of scale as AT&T and Verizon Wireless.⁵⁰⁶ RTG and NTCA claim that AT&T and Verizon Wireless have the ability to lower prices and sustain these prices because they are able to subsidize buildout and service in these areas from revenue generated in their urban markets.⁵⁰⁷ Further, these small rural providers would be unable to compete effectively in non-price dimensions as well because they are unable to obtain nationwide data roaming services and access to the latest handsets.⁵⁰⁸ RTG asserts that once AT&T and Verizon Wireless drive out competition in a market, they would be able to artificially adjust their prices upwards.⁵⁰⁹

145. The Applicants argue that a predatory pricing claim is unsupported by the record and unlikely under economic theory.⁵¹⁰ The Applicants state that it is not predatory to price below the cost of another competitor.⁵¹¹ Rather, a claim of predatory pricing requires a showing that the alleged predator's prices are below an appropriate measure of its costs and that the predator must have a reasonable

(Continued from previous page)

ALLTEL-Western Wireless Order, 20 FCC Rcd at 13098-99 ¶ 126; *VoiceStream Wireless Corporation, PowerTel, Inc., Transferors, and Deutsche Telekom AG, Transferee, for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and Petition for Declaratory Ruling Pursuant to Section 310 of the Communications Act, et al.*, IB Docket No. 00-187, *Memorandum Opinion and Order*, 16 FCC Rcd 9779, 9828-30 ¶¶ 88-92 (finding it unlikely that predatory pricing would occur in the United States mobile telephony market). The Supreme Court explained in *Matsushita Electric Industrial Co. v. Zenith Radio Corp.* that “the success of such [predatory] schemes is inherently uncertain: the short-run loss is definite, but the long-run gain depends on successfully neutralizing the competition. Moreover it is not enough simply to achieve monopoly power, as monopoly pricing may breed quick entry by new competitors eager to share in excess profits. The success of any predatory scheme depends on maintaining monopoly power for long enough both to recoup the predators’ losses and to harvest some additional gain.... For this reason, there is consensus among commentators that predatory pricing schemes are rarely tried, and even more rarely successful.” See *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 589 (1986) (citing ROBERT BORK, *THE ANTITRUST PARADOX* 149-155 (1978)); see also *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 224, 226-227 (1993); *Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Co., Inc.*, 549 U.S. 312, 323 (2007).

⁵⁰³ See *CARLTON & PERLOFF*, *supra* note 502, at 352-357.

⁵⁰⁴ RTG Petition at 8; RTG Reply at 3-4. RTG claims that AT&T’s and Verizon Wireless’s economies of scale and scope are a result of consolidation of the wireless industry in the last few years, and given the size of the Applicants and the nature of the wireless industry, these economies of scale and scope cannot be replicated by other market players. See RTG Reply at 3-4. See also NTCA Aug. 7, 2010 *Ex Parte* at 3 (noting that a variety of anticompetitive conditions exacerbates this problem such as the ability of nationwide providers to offer advanced technology choices years before the competition).

⁵⁰⁵ RTG Petition at 8.

⁵⁰⁶ *Id.*

⁵⁰⁷ *Id.* at 8 n.16; NTCA Aug. 7, 2010 *Ex Parte* at 3.

⁵⁰⁸ RTG Petition at 8.

⁵⁰⁹ *Id.* at 9.

⁵¹⁰ Joint Opposition at 7.

⁵¹¹ *Id.*

expectation of recovering, in the form of later monopoly profits, more than the losses suffered.⁵¹² The Applicants also argue that lower retail prices are good for consumers and therefore in the public interest.⁵¹³

146. *Discussion.* We are not persuaded that AT&T and Verizon Wireless would be able to engage in successful price predation. Post-transaction, if AT&T and Verizon Wireless were to attempt to engage in predatory pricing, it is highly unlikely that either carrier could maintain an artificially low price for a sufficient period of time, and even if they could, there is no evidence they would be able to recover any losses through monopoly profits. Neither the record nor our analysis of market conditions indicates that this transaction would likely provide AT&T or Verizon Wireless with the ability to engage in a long-term successful price predation strategy. Therefore, we do not find RTG's claims of price predation persuasive or supported by the record.

G. Trafficking Claims

147. *Background.* Section 1.948(i) of the Commission's Rules states that "[a]pplications for approval of assignment or transfer may be reviewed by the Commission to determine if the transaction is for purposes of trafficking in service authorizations."⁵¹⁴ The rule defines trafficking as "obtaining or attempting to obtain an authorization for the principal purpose of speculation or profitable resale of the authorization rather than for the provision of telecommunication services to the public or for the licensee's own private use."⁵¹⁵ The anti-trafficking rules provide that Commission review for the purposes of determining whether trafficking has occurred is discretionary.⁵¹⁶

148. Cellular South asserts that the Commission should investigate whether Verizon Wireless engaged in trafficking with respect to the authorizations in 65 of the 79 markets that are included in the instant transaction.⁵¹⁷ Because in these 65 markets Verizon Wireless seeks to divest business units and related authorizations it had acquired in its merger with ALLTEL, Cellular South argues that the Commission should inquire into whether Verizon Wireless acquired ALLTEL's licenses for the principal purpose of immediately reselling them for a profit.⁵¹⁸ Cellular South also requests that the applications be designated for a hearing.⁵¹⁹

⁵¹² *Id.* at 8 (citing Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications Inc. to AT&T Corp., CS Docket No. 98-178, *Memorandum Opinion and Order*, 14 FCC Rcd 3160, 3214 ¶ 115 n.324 (1999) and *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 222-23 (1993)).

⁵¹³ Joint Opposition at 6-7.

⁵¹⁴ 47 C.F.R. § 1.948(i).

⁵¹⁵ *Id.* at § 1.948(i)(1). The Commission may require applicants to submit an affirmative showing demonstrating that the assignor or transferor did not acquire the authorization for the principal purpose of speculation or profitable resale of the authorization. *Id.* at § 1.948(i)(2).

⁵¹⁶ *Id.* at § 1.948(i) (stating that "[a]pplications for approval of assignment or transfer *may* be reviewed by the Commission to determine if the transaction is for purposes of trafficking in service authorizations" (emphasis added)).

⁵¹⁷ Cellular South Petition at 10-11. As noted above, the Commission required Verizon Wireless to divest business units in 105 markets in connection with its acquisition of ALLTEL. *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17515-17 ¶¶ 157, 159. The instant applications include 79 of the markets. In 65 of these 79 markets, Verizon Wireless seeks to divest operating units formerly held by ALLTEL.

⁵¹⁸ Cellular South Petition at 11.

⁵¹⁹ *Id.* at 11.

149. The Applicants assert that Verizon had no choice but to acquire the subject licenses in the process of acquiring ALLTEL, and it would not seek to resell them without a specific direction from the Commission and the DOJ.⁵²⁰ In addition, they argue that the anti-trafficking rule is not aimed at “subsequent sale of *constructed* facilities *acquired at a market price*.”⁵²¹ Cellular South responds that some of the subject licenses are for unconstructed facilities, and, in any event, the language of section 1.948(i) broadly applies to any grant or request for a grant of service authorizations.⁵²² It also claims that the Commission’s decisions cited by the Applicants do not limit the application of the anti-trafficking rule.⁵²³ Cellular South claims that it has made a sufficient showing that Verizon Wireless (1) obtained the subject licenses knowing it could not control or operate the systems to provide telecommunications services to the public, and (2) formed its intent to resell the subject licenses prior to the Commission’s grant of the Verizon Wireless-ALLTEL merger application.⁵²⁴ Finally, it reiterates its claim that a hearing is required to determine whether Verizon Wireless sought to obtain the subject licensees with the intent to resell them at a profit.⁵²⁵

150. The 65 markets where an ALLTEL entity is the current licensee involve a total of 149 cellular and PCS licenses. Seventy of the licenses are for cellular service, and all but one of the cellular licenses were awarded pursuant to random selection (lotteries). The remaining cellular license was awarded pursuant to competitive bidding in Auction 45, which involved three cellular RSA licenses in which the original lottery-winning applicant had been disqualified.⁵²⁶ Seventy-nine of the licenses being assigned from ALLTEL entities are PCS licenses, which were all originally awarded pursuant to competitive bidding, in Auction 4, 5, 11, 22, 35, or 58.

151. *Discussion.* We find that Cellular South’s claims regarding violation of our anti-trafficking policies are based on an apparent misunderstanding of the applicable rules and policies. Former section 22.943 of the Commission’s Rules addressed limitations on assignments and transfers of cellular authorizations.⁵²⁷ This section provided that “[a]pplications for consent to transfer of control or assignment of authorization in the Cellular Radiotelephone Service are subject to the provisions of Sec.

⁵²⁰ Joint Opposition at 31.

⁵²¹ *Id.* (emphasis in original) (citing Year 2000 Biennial Regulatory Review – Amendment of Part 22 of the Commission’s Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and Other Commercial Mobile Radio Services, WT Docket No. 01-108, *Report and Order*, 17 FCC Rcd 18401, 18437 ¶ 72 (2002) (“2000 Biennial Regulatory Review”), and Forbearance From Applying Provisions of the Communications Act to Wireless Telecommunications Carriers, WT Docket No. 98-100, *First Report and Order*, 15 FCC Rcd 17414, 17429 ¶ 33 (2000) (“*Forbearance Order*”). The Applicants also state that all subject licenses acquired from ALLTEL except several common carrier fixed point-to-point microwave licenses have been constructed. Joint Opposition at 31 n.112.

⁵²² See Cellular South Reply at 10.

⁵²³ See *id.* at 10-11 n.22 (stating that while the *Forbearance Order* noted that the Commission would rarely review authorizations obtained in an auction because the initial licenses are required to pay market price for licenses acquired in auction, the Applicants are not the initial licensees, nor did they acquire the subject licenses in auction).

⁵²⁴ See *id.* 12-16.

⁵²⁵ See *id.* at 11.

⁵²⁶ Auction of Cellular Licenses for Rural Service Areas Scheduled for May 29, 2002 – Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures, *Public Notice*, 17 FCC Rcd 4135, 4138 n.2 (WTB 2002).

⁵²⁷ 47 C.F.R. § 22.943 (1997).

22.139 [the then applicable rule regarding trafficking].⁵²⁸ This section, however, also exempted “[a]pplications for consent to transfer of control or assignment of a cellular authorization obtained by random selection, after commencement of service,” among others, from the application of the then anti-trafficking rule.⁵²⁹ Thus, former section 22.943 by its terms excluded from the definition of impermissible trafficking the transfer of cellular licenses awarded pursuant to random selection and where service had commenced. The Commission explained that it adopted the rule in order “to balance the public interest in liberal transferability of licenses with a means to deter insincere applicants from speculation on unbuilt facilities.”⁵³⁰ Since all but one of the cellular licenses currently held by ALLTEL entities were awarded by random selection and the necessary construction obligations were satisfied for these licenses well before they were acquired by Verizon Wireless, there can be no trafficking concern regarding these licenses.

152. The remaining cellular license and the PCS licenses formerly held by ALLTEL entities were all awarded pursuant to competitive bidding. The legislative history associated with the Congressional authorization of the use of competitive bidding to determine the award of licenses⁵³¹ indicates that Congress was not concerned with the trafficking and warehousing of licenses awarded in competitive auctions, which guarantee a price set by market forces.⁵³² Instead, Congress was confident

⁵²⁸ 47 C.F.R. § 22.943(a) (1997).

⁵²⁹ 47 C.F.R. § 22.943(a)(2) (1997).

⁵³⁰ 2000 Biennial Regulatory Review, 17 FCC Rcd at 18436 ¶ 72. See also Year 2000 Biennial Regulatory Review – Amendment of Part 22 of the Commission’s Rules To Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and Other Commercial Mobile Radio Services, WT Docket No. 01-108, *Notice of Proposed Rulemaking*, 16 FCC Rcd 11169, 11195 ¶ 64 (2001) (“The cellular anti-trafficking rules specifically permit the transfer of cellular licenses awarded by lottery after construction. This policy was intended to balance the public interest in efficient use of the spectrum through free transferability of licenses with a deterrent for insincere applicants to speculate in unbuilt facilities.”); Amendment of the Commission’s Rules To Allow the Selection from Among Mutually Exclusive Competing Cellular Applications Using Random Selection or Lotteries Instead of Comparative Hearings, CC Docket No. 83-1096, *Report and Order*, 98 F.C.C. 2d 175, 217 ¶ 77 (1984) (“cellular licenses awarded by lottery will be transferable after construction without regard to a minimum license holding period”).

⁵³¹ The 1993 Omnibus Budget Reconciliation Act amended the Communications Act of 1934 to allow the use of competitive bidding to issue licenses and to restrict the use of lotteries. Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 6002, 107 Stat. 312, 388-92 (1993), amended by the Balanced Budget Act of 1997, Pub. L. No. 105-33, § 3002-3, 111 Stat. 251, 258-66 (1997) (current version at 47 U.S.C. § 309(j)). It required the Commission to establish, by regulation, the methodology of the auction and eligibility to bid for those licenses. 47 U.S.C. § 309(j)(3). After setting the methodology for a particular competitive bidding system, the Commission was required to establish the requirements to participate in an auction. 47 U.S.C. § 309(j)(4). Congress set forth five factors the Commission must consider when prescribing its regulations, among them, a requirement that the Commission should “require such transfer disclosures and anti-trafficking restrictions and payment schedules as may be necessary to prevent unjust enrichment as a result of the methods employed to issue licenses and permits[.]” In 1998, several service-specific anti-trafficking rules adopted pursuant to the congressional mandate were consolidated into the current anti-trafficking rule in Section 1.948(i). See Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission’s Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Report and Order*, WT Docket No. 98-20, 13 FCC Rcd 21027, 21079 ¶ 112-13 (1998) (“*ULS Order*”). Specifically, the following service-specific rules were removed: Sections 1.924, 22.137, 22.944, 24.439, 24.839, 26.319, 26.324, 27.306, 27.324, 80.56, 87.31, 87.33, 90.153, 95.109, 95.111, 95.821, 101.53, and 101.55. See *ULS Order*, 13 FCC Rcd at Appendix F.

⁵³² H.R. REP. NO. 103-111 at 257 (1993), *reprinted in* 1993 U.S.C.C.A.N. 378, 584 (“H.R. REP. NO. 103-111”).

that “[i]n the system of open competitive bidding, trafficking in licenses should be minimal, since the winning bidder would have paid a market price for the license.”⁵³³ It has been the Commission’s position that, consistent with the Congressional mandate, “we would rarely need to exercise this discretionary authority to review assignments or transfers of authorizations that were assigned through auction because the auction process, by requiring initial licensees to pay market value for their authorizations, effectively safeguards against . . . speculation.”⁵³⁴

153. The Commission has made clear that the transfer of cellular licenses awarded pursuant to random selection and that have been constructed does not fall within proscribed trafficking in Commission licenses. The Commission has also made clear that the transfer of licenses awarded pursuant to competitive bidding will seldom raise any trafficking concerns. We therefore find that the transfer of the subject cellular and PCS licenses⁵³⁵ from Verizon Wireless to AT&T does not raise any trafficking concerns.

H. *Ex Parte* Status of Proceeding

154. *Background.* In the public notice seeking comment on the proposed transaction, the Bureau, pursuant to its authority under section 1.1200(a) of the Commission’s Rules,⁵³⁶ announced that this proceeding would be governed by permit-but-disclose *ex parte* procedures that are applicable to proceedings under section 1.1206 of the Commission’s Rules.⁵³⁷ On July 20, 2009, Cellular South filed a petition for expedited reconsideration objecting to the *ex parte* status of the proceeding, asserting that the Bureau’s decision was a violation of section 1.1208 of the Commission’s Rules and section 309(d) of the Communications Act, as well as procedural and due process rights.⁵³⁸

155. *Discussion.* The Commission has recently addressed many of the same claims made by Cellular South in the *AT&T-Centennial Order*.⁵³⁹ In that order, we concluded that, in what otherwise would be a restricted proceeding under section 1.1208, the Commission and its staff have the discretion to apply permit-but-disclose *ex parte* procedures under section 1.1206 if the agency or its staff determine that the proceeding “involves primarily issues of broadly applicable policy.”⁵⁴⁰ As it did in the earlier proceeding, Cellular South again argues that the Commission did not present the required public policy

⁵³³ *Id.* Only where the participation in any competitive bidding situation is limited by the Commission are the anti-trafficking restrictions necessary and appropriate, because “there exists a significant possibility that licenses will be issued for bids that fall short of the true market value of the license.” *Id.* None of the licenses in this transaction originally held by ALLTEL and awarded by means of competitive bidding are governed by any current transferability limitations associated with being obtained pursuant to set-asides or bidding credits.

⁵³⁴ *Forbearance Order*, 15 FCC Rcd at 17429 ¶ 33.

⁵³⁵ The subject applications also include point-to-point microwave licenses authorization under Part 101 of our rules. Section 101.55(a) of our rules, 47 C.F.R. § 101.55(a), provides that “licenses not authorized pursuant to competitive bidding procedures may not be assigned or transferred prior to the completion of construction of the facility.” Section 101.55(d) provides an exception from this limitation for transfer of Part 101 licenses that are not constructed where the transfer is incidental to a sale of other facilities or merger of interests. 47 C.F.R. § 101.55(d). *See also* Application, Public Interest Statement at 37.

⁵³⁶ 47 C.F.R. § 1.1200(a).

⁵³⁷ *Id.* at § 1.1206. *See also Comment Public Notice*, 24 FCC Rcd at 8174.

⁵³⁸ *See generally* Cellular South Petition for Reconsideration.

⁵³⁹ *See AT&T-Centennial Order*, 24 FCC Rcd at 13976-78 ¶¶ 153-57.

⁵⁴⁰ *See id.*, 24 FCC Rcd at 13976-77 ¶ 154, citing 47 C.F.R. § 1.1208 n.2.

determination.⁵⁴¹ Although the *Comment Public Notice*, which is very similar to the public notice issued in the AT&T-Centennial proceeding,⁵⁴² did not fully articulate the reasons for reclassifying the proceeding as permit-but-disclose, we find that the Bureau nonetheless appropriately exercised its discretion, just as we found in the AT&T-Centennial proceeding.⁵⁴³ The Commission has previously determined that similar transactions involving large providers of telecommunications services “involve[] broad public policy issues and we reaffirm that judgment here.”⁵⁴⁴ For example, our major transaction proceedings generally include consideration of wireless competition issues and the possible effects on actual and potential customers. We note that permit-but-disclose *ex parte* procedures have been applied in the majority of recent merger cases.⁵⁴⁵ As we concluded in the *AT&T-Centennial Order*, the public policy determination underlying the decision to use permit-but-disclose *ex parte* procedures for significant transactions is reflected in a well-established administrative practice.⁵⁴⁶ It does not imply that the *ex parte* rules have been ignored.

156. We further find, as we did in the *AT&T-Centennial Order*, that the use of permit-but-disclose procedures in this proceeding does not violate the requirement of section 309(d) of the Communications Acts that allegations of fact in petitions to deny be supported by an affidavit.⁵⁴⁷ As we have previously explained, the affidavit requirement set forth in the section requires an affidavit only for petitions to deny and the applicant’s reply to such petitions. The affidavit requirement does not apply to other filings and does not preclude the Commission from considering other filings. Moreover, the purpose in seeking public comment is to invite information from a variety of perspectives regarding broad public policy concerns, as well as to adduce potential benefits and harms the transaction may cause. We do not believe that section 309(d) precludes us from doing this.⁵⁴⁸ The requirement for a supporting affidavit relates to “specific allegations of fact sufficient to show that . . . grant of the application would be prima facie inconsistent with [the requirements of the Communications Act].”⁵⁴⁹ It does not apply to

⁵⁴¹ Compare Cellular South Petition for Reconsideration at 6 with Petition for Reconsideration of Cellular South, Inc., WT Docket No. 08-246, filed Jan. 15, 2009 (Cellular South AT&T-Centennial Petition for Reconsideration).

⁵⁴² See AT&T Inc. and Centennial Communications Corp. Seek FCC Consent to Transfer Control of Licenses, Leasing Arrangements, and Authorizations, WT Docket No. 08-246, *Public Notice*, 23 FCC Rcd 17966 (2008).

⁵⁴³ See *AT&T-Centennial Order*, 24 FCC Rcd at 13976-77 ¶ 154.

⁵⁴⁴ See, e.g., “Permit But Disclose” Ex Parte Status Accorded to Proceeding Involving Applications Filed by Voicestream Wireless Corporation, Omnipoint Corporation, Cook Inlet/VS GSM II PCS, LLC and Cook Inlet/VS GSM III PCS, LLC for Consent to Transfer of Control and Assignment of Licenses and Authorizations, *Public Notice*, 15 FCC Rcd 6939 (1999).

⁵⁴⁵ See, e.g., AT&T Inc. and Centennial Communications Corp. Seek FCC Consent to Transfer Control of Licenses, Leasing Arrangements, and Authorizations, WT Docket No. 08-246, *Public Notice*, 23 FCC Rcd 17966 (2008); Verizon Wireless and Atlantis Holdings LLC Seek FCC Consent to Transfer Licenses, Spectrum Manager and *De Facto* Transfer Leasing Arrangements, and Authorizations, and Request a Declaratory Ruling on Foreign Ownership, WT Docket No. 08-95, *Public Notice*, 23 FCC Rcd 10004 (2008); Sprint Nextel Corporation and Clearwire Corporation Seek FCC Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 08-94, *Public Notice*, 23 FCC Rcd 9988 (2008).

⁵⁴⁶ See *AT&T-Centennial Order*, 24 FCC Rcd at 13976-77 ¶ 154.

⁵⁴⁷ See *id.*, 24 FCC Rcd at 13977 ¶ 155.

⁵⁴⁸ See *id.*

⁵⁴⁹ 47 U.S.C. § 309(d)(1).

“matters which [the Commission] may officially notice.”⁵⁵⁰ We believe that we may take official notice of the kind of policy-related concerns raised by the *ex parte* filings.⁵⁵¹

157. We also found in the *AT&T-Centennial Order* and again find here that the use of permit-but-disclose procedures does not conflict with other procedural rules applicable to this proceeding or considerations of due process.⁵⁵² Cellular South contends that by filing a petition to deny, the company acquired procedural rights that “involve being served with copies of papers that [Verizon Wireless and AT&T] may file with the Commission.”⁵⁵³ While the rules cited by Cellular South provide for the service of some pleadings, they do not bar the Commission or its staff from soliciting additional types of pleadings to which the service requirements do not apply.⁵⁵⁴ In this regard, the use of permit-but-disclose *ex parte* procedures in lieu of service does not in itself deprive parties of basic due process. As we concluded in the *AT&T-Centennial Order*, the use of permit-but-disclose procedures serves to give the parties adequate notice of allegations concerning them and a fair opportunity to respond.⁵⁵⁵ While *ex parte* presentations need not be served on Cellular South, they are readily available on the Commission’s web site on the Electronic Comment Filing System (“ECFS”) and the Office General Counsel Transaction Team web page, and can be accessed, reviewed, and responded to in a timely manner by Cellular South. Due process does not require more.⁵⁵⁶

158. Cellular South argues in this proceeding that the harm caused by the *ex parte* status of this proceeding will be exacerbated by the issuance of a “wholly-unlawful protective order.”⁵⁵⁷ The Commission has previously determined to use protective orders in order to ensure the protection of competitively sensitive information while still permitting limited disclosure for a specific public purpose,⁵⁵⁸ and protective orders have been employed in a number of major transactions, wireless and otherwise. Notwithstanding Cellular South’s claims, the protective orders in this proceeding provide mechanisms for review by counsel and other representatives of third parties while ensuring protection from unnecessary disclosure for information and documents (provided by the Applicants as well as other entities) that are in fact confidential under the Commission’s rules and the Freedom of Information Act.

⁵⁵⁰ *Id.*, § 309(d)(2).

⁵⁵¹ See *City of Erie v. Pap's A.M.*, 529 U.S. 277, 298 (2000) (administrative agency may take official notice of “legislative facts” within its special knowledge), citing *FCC v. National Citizens Comm. for Broadcasting*, 436 U.S. 775 (1978) (Commission’s expertise in predicting the anticompetitive impact of broadcasting co-ownership).

⁵⁵² See *AT&T-Centennial Order*, 24 FCC Rcd at 13977-78 ¶ 156.

⁵⁵³ Cellular South Petition for Reconsideration at 13.

⁵⁵⁴ In particular, we do not construe the service requirement of 47 C.F.R. § 1.927(i) to extend beyond the context of the applicant’s duty to serve amendments to its application and related pleadings on the petitioner to deny.

⁵⁵⁵ See *AT&T-Centennial Order*, 24 FCC Rcd at 13977-78 ¶ 156, citing Amendment of 47 C.F.R. § 1.1200 et seq. Concerning Ex Parte Presentations in Commission Proceedings, GC Docket No. 95-21, *Notice of Proposed Rulemaking*, 10 FCC Rcd 3240, 3243 ¶¶ 20-22 (1995).

⁵⁵⁶ See *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 546 (1985) (“The essential requirements of due process . . . are notice and an opportunity to respond”).

⁵⁵⁷ Cellular South Petition for Reconsideration at 14-15.

⁵⁵⁸ Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, GC Docket No. 96-55, *Report and Order*, 13 FCC Rcd 24816, 24823-24, 24831-32, ¶¶ 9, 21 (1998).

159. Cellular South asserts that the Commission has in the past accepted *ex parte* presentations without enough time for interested parties to respond before the Commission took action.⁵⁵⁹ As we did in the *AT&T-Centennial Order*, we decline to address complaints about procedures in prior proceedings.⁵⁶⁰ Cellular South has pointed to no actions in this proceeding that deprived it or other parties of basic fairness. Nonetheless, we agree that a comprehensive reexamination of our *ex parte* practices is warranted and such an effort is underway.⁵⁶¹

VIII. CONCLUSION

160. We find that the proposed transaction, with the conditions we impose based on the commitments made by AT&T and Verizon Wireless, raises no competitive concerns and is likely to result in transaction-specific public interest benefits. Moreover, we conclude that, consistent with the Commission's intent in the *Verizon Wireless-ALLTEL Order*, the proposed transfer of the licenses and business units associated with 79 markets from Verizon Wireless to AT&T will promote competition and provide consumers with additional wireless services in a number of markets around the country. Accordingly, we conclude that the grant of the subject assignment and transfer of control applications will serve the public interest.

IX. ORDERING CLAUSES

161. Accordingly, having reviewed the applications, the petitions, and the record in this matter, IT IS ORDERED that, pursuant to sections 4(i) and (j), 214, 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 214, 309, 310(d), the applications for the assignment or transfer of control of licenses and partial assignment of international section 214 authorizations from Celco Partnership d/b/a Verizon Wireless and certain of its subsidiaries to Abraham Divestiture Company LLC as owned indirectly and controlled by AT&T Inc. or as owned by Garden Acquisitions, Inc. as an exchange accommodation titleholder for AT&T Inc. are GRANTED, to the extent specified in this Memorandum Opinion and Order and subject to the conditions specified herein.

162. IT IS FURTHER ORDERED that, pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and section 63.18 of the Commission's rules, 47 C.F.R. § 63.18, Abraham Divestiture Company LLC is authorized to provide facilities-based international service in accordance with section 63.18(e)(1) of the Commission's rules and resale international service in accordance with section 63.18(e)(2) of the Commission's rules, 47 C.F.R. § 63.18(e)(1), (2), pursuant to international Section 214 authorization File No. ITC-214-20090522-00562.

163. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 214, 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 214, 309, 310(d), the Petitions to Deny the assignment and transfer of control of licenses from Verizon Wireless to AT&T are DENIED IN PART and GRANTED IN PART for the reasons stated herein.

164. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the Petition for Expedited Reconsideration filed by Cellular South, Inc. is DENIED for the reasons stated herein.

⁵⁵⁹ Cellular South Petition for Expedited Reconsideration at 22-23. Cellular South specifically cites events related to the Verizon Wireless-ALLTEL transaction.

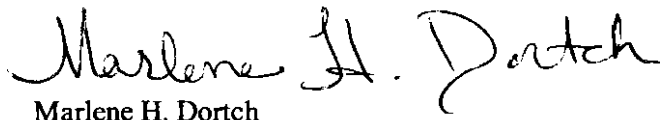
⁵⁶⁰ *AT&T-Centennial Order*, 24 FCC Rcd at 13978 ¶ 157.

⁵⁶¹ Amendment of the Commission's *Ex Parte* Rules and Other Procedural Rules, GC Docket No. 10-43, *Notice of Proposed Rulemaking*, 25 FCC Rcd 2403 (2010).

165. IT IS FURTHER ORDERED that the above grant shall include authority for AT&T to acquire control of: (a) any license or authorization issued to Verizon Wireless and its subsidiaries that is related to the properties to be acquired by AT&T during the Commission's consideration of the transfer of control applications or the period required for consummation of the transaction following approval; (b) any construction permits that are related to the properties to be acquired by AT&T that mature into licenses after closing; and (c) applications that are related to the properties to be acquired by AT&T that are pending at the time of consummation of the proposed transfer of control.

166. IT IS FURTHER ORDERED that this Memorandum Opinion and Order SHALL BE EFFECTIVE upon adoption. Petitions for reconsideration under section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, may be filed within thirty days of the date of public notice of this Memorandum Opinion and Order.

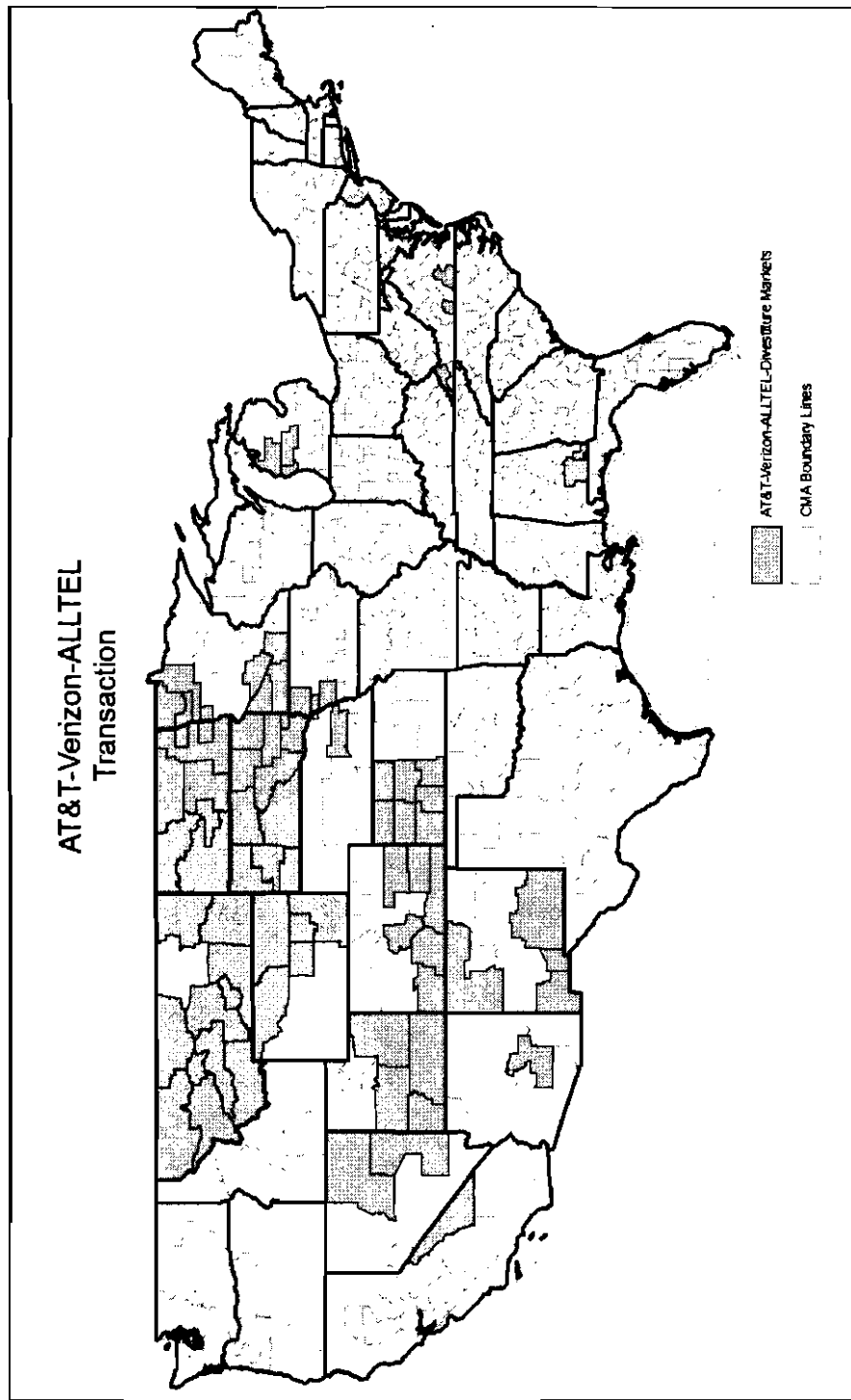
FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in cursive script that reads "Marlene H. Dortch".

Marlene H. Dortch
Secretary

APPENDIX A

Map of Markets



APPENDIX B**Applications Granted*****Section 310(d) Applications – Parts 22, 24, 27, and 101 – Wireless Radio Services Applications***

<u>File No.</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
0003840313	ALLTEL Communications, LLC	KNKA543
0003841825	ALLTEL Communications, LLC	KNLG298
0003845294	Alltel Communications, LLC	WMJ261
0003841826	ALLTEL Communications of New Mexico, Inc.	KNKN216
0003841827	ALLTEL Communications of Southern Michigan Cellular LP	KNKA506
0003841830	ALLTEL Communications of the Southwest Limited Partnership	KNKN206
0003841832	Alltel Communications of Virginia No. 1, LLC	KNKA655
0003845295	Alltel Communications of Virginia No. 1, LLC	WLV528
0003841833	Alltel New License Sub, LLC	WQIF351
0003845109	Las Cruces Cellular Telephone Company	KNKA605
0003841837	Midwest Wireless Communications L.L.C. d/b/a Alltel	KNLG882
0003841834	Midwest Wireless Communications L.L.C. d/b/a Alltel	KNLF485
0003841842	Midwest Wireless Iowa L.L.C. d/b/a Alltel	WPOM853
0003841840	Midwest Wireless Iowa L.L.C. d/b/a Alltel	KNLG863
0003841902	WWC Holding Co., Inc.	KNKA571
0003841967	WWC Holding Co., Inc.	KNLF934
0003841846	WWC License L.L.C.	KNKA573
0003841843	WWC License L.L.C.	WPYQ942
0003845283	WWC License L.L.C.	WMK901
0003841868	Cellco Partnership	WQCS434
0003845282	New Par	WQHT227
0003841849	New Par	KNLF500
0003841851	RCC Minnesota, Inc.	WQFA857
0003841854	RCC Minnesota, Inc.	KNKN282
0003841852	RCC Minnesota, Inc.	WMR721
0003841857	Verizon Wireless (VAW) LLC	KNLH260

Section 214 Authorizations

<u>File No.</u>	<u>Authorization Holder</u>	<u>Authorization Number</u>
ITC-ASG-20090522-00241	Western Wireless, LLC	ITC-214-20010427-00254
ITC-ASG-20090522-00242	Rural Cellular Corporation	ITC-214-19940224-00114
		ITC-214-19980401-00220
ITC-ASG-20090522-00243	Cellco Partnership	ITC-214-20010504-00279
ITC-ASG-20090552-00244	Alltel Communications, LLC	ITC-214-19960404-00138

Exchange Accommodation Titleholder Spectrum Lease Application

<u>File No.</u>	<u>Lessee</u>	<u>Lead Call Sign</u>
7003ALNL10	AT&T Mobility II LLC	KNKA506

APPENDIX C**Petitioners and Commenters****Petitions:**

Cellular South, Inc.
Chatham Avalon Park Community Council
National Association of Black Owned Broadcasters, Inc.
NTELOS Inc.
Rural Telecommunications Group, Inc.

Opposition:

AT&T Inc. and Verizon Wireless

Replies:

Cellular South, Inc.
Chatham Avalon Park Community Council
National Association of Black Owned Broadcasters, Inc.
NTELOS Inc.
Rural Telecommunications Group, Inc.

Comments and *Ex Parte* Filings

Cox Communications
Daniel Dufner
National Telecommunications Cooperative Association
Oglala Sioux Tribe
Public Service Communications, Inc.
South Dakota Public Utilities Commission
Sprint Nextel Corporation
Jason Stidham
Telephone USA Investments, Inc.
Mark Uhde
Jerry Fetterman

APPENDIX D

AT&T Letter of Commitment



Joan Marsh
Vice President –
Federal Regulatory

AT&T Services, Inc.
1120 20th Street, N.W.
Suite 1000
Washington, D.C. 20036

202.457.3120 Phone
832.213.0172 Fax
joanmar@att.com

May 20, 2010

BY ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth St., S.W.
Washington, D.C. 20554

Re: *Applications of AT&T Inc. and Verizon Wireless for Consent To Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement, WT Docket No. 09-104*

Dear Ms. Dortch:

On May 22, 2009, applications were filed for AT&T to purchase wireless systems serving 1.5 million customers in mostly rural communities across parts of 18 states where AT&T currently has little or no presence. Verizon Wireless is selling these systems to meet divestiture obligations imposed by DOJ and the FCC from its merger with ALLTEL.

The public interest benefits of this transaction are indisputable. AT&T will invest approximately \$400 million to build out mobile broadband networks, creating new jobs and opportunities across wide swaths of rural America. Consumers in the affected communities will gain access to America's fastest 3G mobile broadband network with accelerated mobile data speeds and simultaneous voice and data capabilities, as well as access to an industry-leading WiFi network with 20,000 hotspots in the U.S. AT&T will offer a greater choice of smartphones and other devices than any other wireless carrier, with tens of thousands of applications available. Consumers will enjoy a host of improved services and features, such as free mobile-to-mobile calling to more than 80 million lines, a wide choice of pricing plans, and reduced roaming charges due to AT&T's vast home calling area. AT&T also will offer the best international coverage of any U.S. carrier, including international roaming voice service in more than 215 countries, data services in more than 170 countries, and 3G services in more than 80 countries.

Consumers living outside the areas involved in the transaction also will benefit. Expanding and deepening AT&T's network means less roaming, a more consistent look and feel to wireless service, and fewer dropped calls.

The transaction will increase competition. AT&T does not currently sell wireless service at all in a majority of the areas involved in this transaction, and in the rest of the areas, AT&T's current

presence is limited. Moreover, AT&T will hold only a fraction of the available spectrum in these areas.

Prompt approval of this pro-competitive transaction with its numerous public interest benefits will unquestionably advance the public interest. Nevertheless, in order to expedite approval of this transaction, AT&T makes the following commitments.

1. AT&T commits to negotiate with CDMA roaming partners in good faith and to accommodate reasonable requests for CDMA roaming services at a cell site in accordance with the Commission's roaming rules for as long as AT&T provides CDMA retail or roaming services at that specific cell site. More specifically, for any period during which AT&T continues to provide any automatic CDMA roaming service to Verizon Wireless at a cell site acquired in this transaction, AT&T commits to provide the same type of automatic CDMA roaming service at that same cell site to other facilities-based CDMA carriers upon reasonable request on reasonable terms and conditions, provided, however, that nothing in this commitment shall be construed to restrict AT&T from terminating CDMA services at any cell site to all CDMA carriers at any time consistent with AT&T's rights and obligations under its roaming agreement with Verizon Wireless or otherwise to impede AT&T's offering of a robust HSPA or GSM service.

2. Within six months of the date of the closing of this transaction, AT&T commits either to file with the Commission applications to divest 15 MHz of spectrum (either 700 MHz, cellular, PCS, and/or AWS-1 at AT&T's election) in CMA476 -- Michigan RSA No. 5, or else to surrender licenses for such amounts.

3. AT&T understands the importance of ensuring the continuity of high quality, affordable services on tribal lands and is committed to ensuring that AT&T has a positive and mutually beneficial relationship with the Oglala Sioux Tribe (the "Tribe") on a going forward basis. Therefore, with respect to the Pine Ridge Reservation (the "Reservation"):

a. AT&T will offer to undertake on a going forward basis the rights and obligations of WWC License LLC ("WWC") under the Tate Woglaka Service Agreement, dated August 21, 2000 (the "Service Agreement"), which prescribes the terms under which WWC currently provides service to the Reservation. Any outstanding obligations owed to the Tribe under the Service Agreement or by virtue of WWC's operations that predate or arise out of facts and circumstances that predate the closing of this transaction will remain WWC's responsibility.

b. AT&T will build a 3G HSPA broadband wireless network on the Reservation and transition the divestiture CDMA network subscribers living within the boundaries of the Reservation (the "Reservation Divestiture CDMA Network Subscribers") to the 3G HSPA broadband wireless network within 12 months of the closing of this transaction. Reservation Divestiture CDMA Network Subscribers will be eligible to receive new 3G handsets comparable to their existing CDMA handsets at no cost and with no contract extension.

c. Until the transition to the 3G HSPA broadband wireless network is complete, AT&T will provide the Reservation Divestiture CDMA Network Subscribers with the same degree of access to services on the divestiture CDMA network as they currently have.

d. To support the continued offering of high quality services and certain low cost rate plans on the Reservation, AT&T intends to request that the Commission transfer to it WWC's eligible telecommunications carrier ("ETC") designation. In any event, AT&T will continue to offer the postpaid rate plans currently offered to Reservation Divestiture CDMA Network Subscribers without any material changes for one year after the closing of this transaction.¹ Thereafter, if the FCC transfers WWC's ETC status to AT&T and if ETC funding continues to be available to AT&T, then AT&T will continue to offer comparable voice rate plans. Reservation Divestiture CDMA Network Subscribers also will have access on the 3G HSPA broadband wireless network to enhanced services -- such as enhanced voice mail, call forwarding, and three party calling -- that are similar to those currently available.

AT&T's ability to carry out this third commitment depends on AT&T being able under the Service Agreement to enter the Reservation to construct, operate and maintain the CDMA and/or HSPA networks and obtaining at the closing of the transaction and holding thereafter in peaceful and quiet enjoyment without any encumbrances the spectrum licenses, towers, and other network assets and agreements relevant to the Reservation that Verizon Wireless has agreed to convey to AT&T. Nothing in this third commitment shall prevent the Tribe and AT&T from agreeing to a mutually acceptable alternative to the Service Agreement. This third commitment shall expire three years after the closing of this transaction.

AT&T shall inform the Commission promptly of any developments of which AT&T is aware that AT&T reasonably anticipates will materially affect AT&T's ability to fulfill this third commitment. AT&T's performance of WWC's obligations under the Service Agreement on a going forward basis after the closing of this transaction is not intended to prejudice any claims that the Tribe may have against WWC arising from WWC's operations or its performance under the Service Agreement prior to the closing of this transaction.

* * * * *

The commitments described herein will be null and void if the transaction is not consummated.

In accordance with the Commission's rules, this letter is being filed electronically with the Secretary for inclusion in the public record.

Sincerely



Joan Marsh

¹ For systems reasons, AT&T will not be able to continue the Lifeline prepaid plans currently offered by WWC on the Reservation, but will convert customers on such plans to Lifeline postpaid plans at the same rates.

APPENDIX E

Verizon Wireless Letter of Commitment



1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

7925 JONES BRANCH DRIVE
MCLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wileyrein.com

Nancy J. Victory
202.719.7344
nvictory@wileyrein.com

May 27, 2010

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless
for Consent to Assign or Transfer Control of Licenses and Authorizations
and Modify a Spectrum Leasing Arrangement, WT Docket No. 09-104

Dear Ms Dortch:

Pursuant to the request of the Wireless Telecommunications Bureau staff, this letter confirms Verizon Wireless' commitment that, during the term of the Transition Services Agreement ("TSA"), Verizon Wireless will continue to administer CDMA roaming traffic from other carriers on the divestiture market networks pursuant to its TSA with AT&T, and Verizon Wireless will clear that traffic at the rates, terms and conditions set forth in its (including ALLTEL's) existing roaming agreement with each carrier.

Please contact the undersigned counsel for Verizon Wireless should you have any questions or require additional information.

Respectfully submitted,

/s/ Nancy J. Victory

Nancy J. Victory

cc: Nese Guendelsberger
Kathy Harris
Susan Singer

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: *Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement*, WT Docket No. 09-104

Today's action brings closure to the Commission's 2008 decision to allow two large wireless companies, Verizon Wireless and ALLTEL, to merge. I expressed my concerns at the time about the impact this combination would have over the affected geographic footprint—especially with regard to consumer choice. Given our finding in the recent Mobile Wireless Competition Report that concentration in U.S. wireless markets has increased dramatically in recent years, the important role that this agency must play in advancing competition and consumer well-being has never been more clear. The decision to allow this merger, though, has already been made. The Order we adopt now takes an important step to help restore at least some level of competitive balance through the implementation of Verizon Wireless' divestiture of certain licenses and associated businesses, as required by the Department of Justice, to AT&T. Absent these divestitures, consumers in large parts of the country would have inevitably experienced less competition, higher prices and lower quality of service.

While I support this Order, the record and discussions surrounding it have served to highlight the continuing unacceptable state of telecommunications in much of Indian Country. The Pine Ridge Reservation—home of the Oglala Sioux Tribe—falls within two of the markets covered by today's decision. I saw first-hand the many challenges facing the Oglala Sioux in Pine Ridge when I visited less than a year ago. While progress has been made in telecommunications there against very heavy odds, there is still so far to go. Indeed there is so very far to go across Indian Country where, for the most part, state-of-the-art communications are strangers in the land.

As we work to tackle the challenge of broadband deployment and adoption throughout America, we must not lose sight of the sad reality that even plain old telephone service, which so many of us take for granted, is at the shockingly low level of less than 70 percent of Native American households. And we don't even begin to have reliable data on the status of Internet subscribership on tribal lands, because no one has bothered to collect it. Anecdotally, we know that broadband access on tribal lands is minimal—well below 10 percent. That's not just unacceptable. It's a national disgrace. Broadband is critical technology for the economic growth—perhaps even the survival—of these communities.

I recognize that addressing all the challenges and opportunities related to bringing Twenty-first century broadband infrastructure and services to Indian Country cannot be done within the confines of the narrowly focused Order we adopt today. That requires breathing new life into the trust relationship with Native Americans, and giving the issues of Indian Country true visibility here at the FCC, day-in and day-out.

We are finally getting onto that path. Earlier today, Chairman Genachowski announced the appointment of Geoff Blackwell to lead the agency's relationship with Indian Country and to oversee the implementation of the National Broadband Plan's recommendations to increase broadband deployment and adoption on tribal lands. I have had the privilege of working closely with Geoff before, and believe his leadership will do much to restore a productive dialogue between the FCC and the sovereign tribal governments. I continue to work with the Chairman and my colleagues to ensure the timely establishment of an Office of Tribal Affairs.

As for the specific problems that the Oglala Sioux Tribe has raised in this proceeding, I fully expect the recipient of the divested licenses, AT&T, to work in good faith with the tribe to find going-forward solutions that are beneficial for all. I am encouraged by the commitments and assurances that AT&T has recently made, and we will be monitoring their implementation very carefully. And, now with Geoff onboard, we have a real conduit for the FCC to hear the voices of the Oglala Sioux and all the Tribes as we work, government-to-government, to bring the enabling power of broadband to Indian Country.